BUREAU OF MEDIATION SERVICES

ARBITRATION AWARD

IN THE MATTER OF ARBITRATION	)	
	)	
Between	)	
	)	**BMS# 16-PA-0574**
METROPOLITAN COUNCIL,	)	
METRO TRANSIT DIVISION	)	
and	)	
	)	**John Remington,**
	)	**Arbitrator**
AMALGAMATED TRANSIT UNION,	)	
LOCAL #1005	)	
	)	

THE PROCEEDINGS

The above captioned parties, having been unable to resolve a dispute over the interpretation of their collective bargaining agreement, selected the undersigned Arbitrator John Remington, pursuant to the provisions of their collective bargaining agreement and under the rules and procedures of the Minnesota Bureau of Mediation Services to hear and decide the matter in a final and binding determination. Accordingly, a hearing was held on August 31, 2016 in St. Paul, Minnesota at which time the parties were represented by counsel and were fully heard. Oral testimony and documentary evidence were presented; no stenographic transcription of the proceedings was taken; and the parties made oral closing arguments on the record.

The following appearances were entered:

For the Employer:

Tony Brown — Labor Relations Program Manager

For the Union:

Tim Louris — Attorney at Law, Minneapolis, MN

THE ISSUE

DID THE EMPLOYER VIOLATE THE PARTIES' LABOR AGREEMENT WHEN IT ASSIGNED A MECHANIC TECHNICIAN TO DELIVER A PART TO AN OUTSIDE VENDOR ON OCTOBER 30, 2015 AND, IF SO, WHAT SHALL THE REMEDY BE?

BACKGROUND

The Metropolitan Council and its Metro Transit Division, hereinafter referred to as the "EMPLOYER" is a public entity of the State of Minnesota and a public employer within the meaning of Minnesota Statutes. Hourly employees of the Transit Division, including but not limited to Stockkeepers, are represented, for purposes of collective bargaining by the Amalgamated Transit Union and its Local Union #1005, hereinafter referred to as the "UNION."

The relevant facts of this matter are essentially undisputed. On October 30, 2015, Dennis Conley, a bus Mechanic/ Technician, was assigned to deliver a bus part to Cummins, an outside vendor. Cummins was apparently in the process of repairing a Transit bus. Conley, who performed no mechanical work on the bus, was paid two hours of overtime for this delivery. Conley is assigned to the Employer's Mechanical

Department and, according to the parties' collective agreement, received a base hourly rate of $29.14 at the time of this overtime assignment. Conley was issued the part by the Employer's Purchasing and Material Management Department which acquires, stores and distributes parts for the Employer's buses. Stockkeepers assigned to this Purchasing and Material Management Department distribute, deliver and track parts and were paid an hourly rate of $26.30 in October of 2015. Two Stockkeepers, Paul Williams and Dan Alcaraz, were working as truck drivers on October 30, 2015 and were allegedly available to make the above delivery on their regular assigned shift at straight time.

As a result of the Employer's decision to assign the above delivery to a Mechanic on overtime rather than to a Stockkeeper truck driver on straight time, Union representative Jody Theilen filed the following Grievance Form on November 2, 2015:

> On Friday, October 30, 2015 a mechanic (#5414) was paid 2 hours overtime to deliver a part to a vender (Cummins) while 2 truck drivers (Paul Williams #73512) and Dan Alcaraz #74104) were on duty. The parts were delivered and a core picked up between 2 and 4 p.m. Truck Drivers (Stockkepers) work until 6:00 p.m. This is mechanical department doing Stockkeeper's work and being paid OT for what Stockkeeper would be doing on straight time.

In remedy this grievance requests that Williams and Alcaraz be paid two hours of overtime each. It also asserts that the past practice of the parties has been to utilize Stockkeeper/ Truck Drivers to deliver parts if they are on the clock.

A first step grievance meeting on this matter was held on November 13, 2015 involving Union Representative and Stockkeeper David Hopwood, Theisen, Material Management Supervisor Michael Rood and Material Management Manager Chris Haefner. The record of this grievance meeting reveals that Hopwood, the Lead Stockkeeper on October 30, had called Material Management Coordinator Bill

Neuenfeldt and advised him that a part needed to be delivered to Cummins. Neuenfeldt initially told Hopwood that a truck driving stockkeeper was available, but subsequently called Hopwood back to advise him that maintenance would handle the delivery. At this grievance meeting the Union also raised the allegation of a past practice of assigning delivery to stockkeeper/ truck drivers and noted that the mechanic (Conley) failed to return the core of the part to the stockkeeper and instead set it "by the back door of the stockroom." This alleged failure could have impacted the stockkeeper's ability to track and manage inventory. The Employer representatives responded that the disputed delivery was analogous to a "road call" which is handled by mechanics who typically both deliver a part to a disabled vehicle and install it. Further, they indicated that it is Rood, the Material Planner Supervisor, who has the authority to direct the work priorities of stockkeepers and that he did so in this instance. In this connection it was noted that it is not unusual for bus maintenance personnel to move parts when material management personnel are not available. "Once a part is properly issued to a maintenance work order, it is not Material Management's responsibility to control the transport of, handling of or accounting for the part." Accordingly, the grievance was denied.

The grievance was heard at the Second Step of the grievance procedure on December 18, 2015. In addition to those in attendance at the first step were ATU Executive Board member John Zapata, Program Labor Relations Manager Tony Brown, and Senior Manager of Finance Steve True. No additional information or allegations were presented and the grievance was again denied on the same basis as it had been rejected at Step 1. The parties being unable to resolve the grievance it was advanced to arbitration in compliance with the provisions of Article 13 of the parties' collective

agreement. There being no contention that the grievance was untimely filed or irregularly processed through the grievance procedure, it is properly before the Arbitrator for final and binding determination.

RELEVANT CONTRACT LANGUAGE

ARTICLE 4
MANAGEMENT PREROGATIVES

The ATU recognizes that all matters pertaining to the conduct and operation of the business are vested in Metro Transit and agrees that the following matters specifically mentioned are a function of the management of the business, including, without intent to exclude things of a similar nature not specified, the type and amount of equipment, machinery and other facilities to be used; the number of employees required on any work in any department; the routes and schedules of its buses; the standard of ability, performance and physical fitness of its employees and rules and regulations requisite to safety. Metro Transit shall not be required to submit such matters to the Board of Arbitration provided by Article 13.

As to the standard of ability, performance and physical fitness of its employees above mentioned Metro Transit agrees to submit to the Board of Arbitration only the claim by the ATU of discrimination against employees in the same group in the application of these standards.

It is understood and agreed, however, that in all such matters Metro Ttransit will consider, insofar as practicable, the convenience and comfort of its employees.

ARTICLE 5
GRIEVANCE PROCEDURE

Section 3. Any dispute or controversy, between Metro Transit an employee covered by this Agreement, or between Metro Transit and the ATU, regarding the application, interpretation or enforcement of any of the provisions of this Agreement, shall constitute a grievance.
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ARTICLE 11
WORK RULES AND PRACTICES

All practices and agreements governing employees enforced by Metro Transit or its predecessors, not in conflict with nor changed by the provisions of this Agreement, may be changed subject to the following conditions:

(a) Work rules and/or practices must not be in conflict with the contract;
(b) Metro Transit must meet and confer with the ATU prior to making any such changes or new work rules:
(c) New work rules and/or practices must be reasonable;
(d) The Metro Transit will furnish the ATU with a copy of all bulletins or orders changing any such rules, regulations or practices;
(e) Work rules and/or practices are subject to the grievance procedure.

ARTICLE 32
JOB CLASSIFICATIONS AND WAGE RATES

Metro Transit will maintain the following job classifications and wage classes:

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MECHANICAL DEPARTMENT

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Mechanic Technician	Wage Class 61

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PURCHASING & MATERIAL MANAGEMENT DEPARTMENT

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Head Stockkeeper	Wage Class 48
Lead Stockkeeper	Wage Class 46
Stockkeeper	Age Class 42

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CONTENTIONS OF THE PARTIES

The Employer takes the position that its decision to assign parts delivery work to a mechanic does not constitute a violation of the contract because there is no provision within the collective agreement prohibiting such assignment. The Employer contends that it made a reasonable assignment based on workloads and the availability of personnel on October 30, 2015 and that there is neither contract language nor established past practice to support the Union's position. Indeed, it argues that its management rights as set forth in Artcile 4, supra, establish its discretionary right to assign work; that no bargaining unit employee was damaged by its decision; and that the Mechanical Department has the right to determine how a part is delivered once it has been issued by Materials Management. The Employer notes that the Arbitrator has no authority to add a provision to the contract and asks that the grievance be denied.

The Union takes the position that the Employer is contractually obligated to maintain the negotiated job descriptions set forth in Article 32; that there were no extenuating circumstances which required the assignment of a mechanic on overtime to deliver the part; and that the work is distinctly within the job description of "Stockkeeper." In this connection it argues that Stockkeepers Williams and Alcaraz were both available for assignment and that the whim or caprice of a supervisor is not sufficient to assign the work to another craft. The Union further takes the position that, contrary to the Employer's contention, this delivery was not analogous to a "road call" since the mechanic assigned was not needed to perform installation of the part, nor did he perform any work at Cummins other than to deliver the part. It argues here that the Employer did not make a good faith effort to "maintain" the job classification of

Stockkeeper. It requests in remedy that the Employer be directed to cease and desist from such assignments out of classification in the future. The Arbitrator here notes that the Union specifically withdrew its previously requested remedy of overtime pay for Williams and Alcaraz at the hearing.

DISCUSSION, OPINION AND AWARD

Prior to a discussion of the controlling merits in this matter, there are two contentions, one raised by the Union, the other by the Employer which need to be addressed. The Union asserts that this matter is governed by past practice, an argument often raised when the contract is silent regarding a specific practice or procedure in dispute. Here, as the Employer maintains, there is no specific provision in the contract concerning the temporary or occasional assignment of work to a class of employees who do not normally perform such work. There are two prior grievances that appear to be relevant here: a 2007 grievance contesting the movement of parts by Bus Maintenance personnel; and a 2009 grievance asserting that stockkeepers have the first right to move parts. While it would be unproductive to recite the facts of these grievances, the Arbitrator is satisfied that neither establishes the exclusive right of stockkkeepers to move and deliver parts; that there is, at best, a mixed practice based on the availability of personnel regarding the delivery of parts; and that no bona fide past practice in this connection can be found in the evidence presented by the parties. Accordingly, the argument that the instant grievance must be determined by past practice must be, and is hereby, rejected by the Arbitrator.

The Employer argues that the October 30, 2015 part delivery in dispute here was a "road call" and that it is well established that Mechanics obtain parts for road calls from Material Management and then deliver them. While this is apparently an established procedure accepted by the parties, the delivery of October 30 to Cummins cannot be deemed a road call. This is so because Mechanic Conley was not expected to install or aid in the installation of the part nor was he required to perform any mechanical work at all in connection with the delivery of the part. The Employer's argument that the delivery in dispute was a road call must therefore be rejected.

It cannot be denied that Article 4 of the parties' agreement grants the Employer the right to conduct and operate its business including certain specific and related functions. However, creation and adjustment of negotiated job descriptions is neither mentioned nor even remotely related to any of the specific categories set forth in Article 4. Of greater importance is the requirement of Article 32 to "maintain the following job classifications," and the requirement of Article 12.a. that work rules and practices may not conflict with the contract. Were the Employer to be permitted to ignore the negotiated job descriptions in the exercise of its management rights, it would inescapably lead to the conclusion that Article 4 was somehow superior to the other provisions of the agreement and conflict with the requirements of Article 12. Such a conclusion would be repugnant to the intent of the parties and the clear language of Article 32 which unambiguously requires the Employer to maintain job classifications. Arbitrary assignment of the duties of one classification to another cannot be deemed maintenance of job classifications. While the Employer argues that its assignment of work in this instance was justified by the unavailability of Stockkeeper/ Truck Drivers, it is significant that this justification

was never raised by the Employer during the grievance procedure and was only introduced at the instant arbitration hearing. Indeed, Stockkeeper/ Truck Drivers Willaims and Alcaraz both credibly testified at the hearing that they were available to make the delivery to Cummins within the constraints of their regular schedule but were never requested to do so or even called to determine their availability. Moreover, the Employer offered no justification or other explanation for its decision other than the unsupported allegation that no truck driver was available.

The Arbitrator declines to speculate as to why the Employer elected to bypass Williams and/ or Alcaraz on October 30, 2015 and instead select a more highly paid employee on an overtime basis to perform the work. However, based on the evidence and testimony presented at the hearing he is compelled to find that such assignment was, as the Union asserts, apparently at the "whim or caprice" of management and in violation of the Employer's duty to maintain the job classification of Stockkeepers. This is not to suggest that the Employer is prevented from making alternative work assignments in extraordinary or emergency situations. However, when it does so it must justify its decision based on clearly identified criteria or establish the existence of a bona fide business reason. It has not done so here.

The Arbitrator has made a particularly detailed review and analysis of the entire record in this matter, and he has given particular attention to the observations and arguments raised by the parties in their closing arguments. In this connection he has determined that the crucial issues raised at the hearing have been addressed above, and that certain other matters noted by the parties must be deemed immaterial, irrelevant or side issues, at the very most, and therefore has not afforded them any significant

attention, if at all, for example: whether or not Stockkeepers are required to track parts and cores once they leave the stockroom; whether or not Stockkeepers ever issue parts directly to outside vendors; whether or not Material Management "controls" parts they have issued; whether or not Conley properly returned the core to Material Management; the assertion that management is entitled to determine how a part is transported once it is delivered; and so forth.

Having considered the above review and analysis, together with the findings and observations hereinabove made, the Arbitrator has determined, and so he finds and concludes, that with the specific facts of the subject grievance and within the meaning of the parties collective bargaining agreement, the preponderance of the evidence dictates a finding that the Employer violated the parties' collective agreement when it assigned delivery work to a Mechanic when employees assigned this work by negotiated job classification were apparently available. Accordingly, an award will issue, as follows:

AWARD

THE EMPLOYER VIOLATED THE PARTIES' LABOR AGREEMENT WHEN IT ASSIGNED A MECHANIC TECHNICIAN TO DELIVER A PART TO AN OUTSIDE VENDOR ON OCTOBER 30, 2015. THE GRIEVANCE MUST BE, AND IS HEREBY SUSTAINED.

REMEDY

THE EMPLOYER SHALL CEASE AND DESIST FROM ARBITRARILY ASSIGNING STOCKKEEPER WORK, AS SET FORTH IN ARTICLE 32 AND RELEVANT JOB DESCRIPTIONS, TO OTHER CLASSIFICATIONS OF EMPLOYEES. AS NO STOCKKEEPER WAS DAMAGED BY THIS BREACH, NO FURTHER REMEDY IS WARRANTED.

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JOHN REMINGTON,
ARBITRATOR

October 10, 2016

Minneapolis, MN